

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

_____ THERESA ROMANO, L.R. BLAKE TRUST, and CONCETTA ROMANO)))	
Plaintiffs)	Civil Action No.
)	03-12626MLW
v.)	
)	
ARBELLA MUTUAL INSURANCE CO.,)	
)	
Defendant)	
_____)	

CONCISE STATEMENT OF MATERIAL FACTS

Pursuant to Local Rule 56.1, Defendant Arbella Mutual Insurance Company's ("Arbella") submits the following concise statement of material and undisputed facts in support of motion for summary judgment.

1. On August 5, 2001, issued a policy of fire insurance (No. 83217400000) to the L.R. Blake Trust. Affidavit of Lewis C. Eisenberg, dated August 3, 2004, ¶ 4, Exh. C (hereinafter "Eisenberg Aff. ¶ __, Exh. __"); Answer ¶ 9.
2. This policy pertains to certain personal and/or real property owned by LR Blake Trust of which Concetta Romano was the Trustee; coverage is set forth in the policy documents themselves. Complaint ¶ 8; Answer ¶ 8.
3. On October 17, 2001, Arbella issued a policy of fire insurance (No. 03234400001) to Theresa M. Romano. Eisenberg Aff. ¶ 5, Exh. D; Answer ¶ 9.
4. This policy pertains to certain personal property owned by Theresa M. Romano; coverage is set forth in the policy documents themselves. Complaint ¶ 8; Answer ¶ 8.

5. As set forth the documents of these two policies, the property at issue in this case was and is located at 49 Bowdoin Avenue, Boston, MA 02121 (“the Subject Premises”). Complaint ¶¶ 7, 10;
6. These two policies were in effect on or about January 1, 2002. Complaint ¶ 8; Answer ¶ 8.
7. On or about January 1, 2002, a fire occurred at 49 Bowdoin Avenue, severely damaging the Subject Premises. Complaint ¶ 12; Answer ¶ 12.
8. The preliminary finding of the Boston Fire Department is that the fire of January 1, 2002 at the Subject Premises was caused by arson. Eisenberg Aff. ¶ 6, Exh. E.
9. Arbella was notified of the fire and resulting damage at the Subject Premises. Complaint ¶ 15; Answer ¶ 15.
10. Arbella investigated cause and circumstance of the fire. Eisenberg Aff. ¶ 9, Exh. H.
11. The investigation included, pursuant to the policy, an examination under oath of Theresa M. Romano. Eisenberg Aff. ¶ 3, Exh. B.
12. At all times relevant to the investigation, Theresa M. Romano is considered to have spoken on behalf of herself, her sister, who is mentally disabled, and on behalf of the L.R. Blake Trust. Eisenberg Aff. ¶¶ 2, 9, Exhs. A, H.
13. Also as part of the investigation, Arbella has repeatedly requested that the Plaintiffs provide certain documents, which were listed in Schedule A of the Notice of Examination under Oath. Eisenberg Aff. ¶¶ 7-9, Exhs. F, G, and H.
14. To date the Plaintiffs have not provided the requested documents. Eisenberg Aff. ¶¶ 7-9, Exhs. F, G, and H.

15. Two realtors testify a caretaker lived at the Subject Premises when the Subject Premises were up for sale. Affidavit of Julie Simmons, dated July 29, 2004, at ¶ 1 (hereinafter "Simmons Aff. ¶ 1"); Affidavit of Lee Coady, dated August 2, 2004, at ¶ 1 (hereinafter "Coady Aff. ¶ 1").
16. Theresa Romano testified during the examination under oath that no one has lived at the Subject Premises other than her, her sister and her parents. Eisenberg Aff. ¶ 3, Exh. B at p. 38.
17. Theresa Romano testified during the examination under oath that she, and sometimes her sister, would spend at least forty percent of their time living at their New Hampshire property. Eisenberg Aff. ¶ 3, Exh. B at p. 35-36.
18. On March 7, 2003, Arbella disclaimed coverage of the Subject Premises on grounds of lack of cooperation and misrepresentation. Eisenberg Aff. ¶ 9, Exh. H.

Respectfully submitted,
ARBELLA MUTUAL INSURANCE COMPANY,
By its attorneys,

CERTIFICATE OF SERVICE

I hereby certify that on this date a true copy of the above document was served upon the attorney of record for each party by First-Class Mail. *hws*

Date: *8/4/04*

Nicholas A. Kenney
NICHOLAS A. KENNEY

Nicholas A. Kenney
Lewis C. Eisenberg (BBO# 152140)
Nicholas A. Kenney (BBO# 650784)
COSGROVE, EISENBERG & KILEY, P.C.
803 Hancock Street --- P.O. Box 189
Quincy, MA 02170
tel: 617.479.7770

Dated: August *4*, 2004